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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: CWK - 175911

PRELIMINARY RECITALS

Pursuant to a petition filed on July 29, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services regarding Medical Assistance (MA), a hearing was held on December 19, 2016, at Waukesha, Wisconsin.

The issue for determination is whether the agency correctly denied the Petitioner's request for funding of a summer camp.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Waukesha County. Petitioner's primary diagnosis is Down Syndrome.
2. Petitioner receives services through the Waukesha County Children's Long Term Service (CLTS) waiver.
3. Petitioner's Individual Service Plan (ISP) includes the following outcomes:
 1. The parents would like a break from caregiving periodically and know that [REDACTED] is safe. The parents would like [REDACTED] to be active in the community and continue to interact with her peers and have structure and consistency with her routine.
 2. The parents would like [REDACTED] to be more independent through communicating her wants and needs, increase her memory skills and following directions.
 3. The parents want [REDACTED] to be safe when outside playing. We want to know where [REDACTED] is at all times.
 4. The parents would like [REDACTED] to have appropriate behavior while interacting with peers and being out in the community.
4. The ISP notes that the family has a respite provider and has received funding for [REDACTED] to support outcome #1. [REDACTED] is a summer day camp for children with special needs. To support outcome #2, music therapy is provided. To support outcome #3, modifications have been made to the Petitioner's outdoor play area and home. To support outcome #4, the Petitioner has been attending the [REDACTED] social skills group and music therapy. The ISP notes that the Petitioner works on taking turns and sharing at Music Therapy in a session with another peer.
5. Petitioner's Music Therapy Treatment Plan includes goals for the Petitioner to increase her independence in preferred activities and self-advocacy skills and independently engage in meaningful activities within her environment.
6. Petitioner made a request to the agency for funding for a [REDACTED] summer day camp 3x/week for the month of August. The request was denied by the agency.

DISCUSSION

The MA Community Waiver Programs (e.g., Community Integration Program, Community Options Program - Waiver) are partially funded by the federal government through the Medical Assistance (MA) program. These Waiver programs must meet federal requirements, including MA regulations when applicable. To receive services through the Waiver programs, a person must be currently eligible for MA, have institutional-level care needs, and be elderly or disabled. Medicaid Eligibility Handbook (MEH), §28.1, available at <http://www.emhandbooks.wi.gov/meh-ebd/>, and the MA Waivers Manual (Manual), at http://dhfs.wisconsin.gov/ltc_cop/waivermanual/index.htm.

For all MA Community Waiver programs, such as COP-W, the agency is charged with assuring that the health and welfare of the recipient is protected. 42 C.F.R. §441.352 & 441.365(h).

The Community Services Waiver Manual describes covered day services for children as follows:

Day Services for children provide children with regularly scheduled activities for part of the day. Services include training, coordination and intervention directed at skill

development and maintenance, physical health promotion and maintenance, language development, cognitive development, socialization, social and community integration and domestic and economic management. This includes services not otherwise available through public education programs that provide after school supervision, daytime services when school is not in session, and services to pre-school age children. Services are typically provided up to five days per week in a non-residential setting and may occur in a single physical environment or in multiple environments, including natural settings in the community. . .

Excludes the basic cost of day care unrelated to a child's disability that may be needed by parents or regular caregivers to allow them to work or participate in educational or vocational training programs. The "basic cost of day care" here means the rate charged by and paid to a child care center for children who do not have special needs. Basic cost of childcare does not include the provision of supplementary staffing and environmental modifications necessary to provide accessibility at regular child care settings; these costs can be covered by this service. . .

Providers are required to have specialized training related to the child's unique needs in order to effectively address the needs of each child served in a particular program, and to ensure their health, safety and welfare. If these unique needs are generally related to emotional and behavioral needs the providers must have training specific to the child's needs and specific psychiatric/behavioral treatment plan. If these unique needs are generally related to physical, medical and personal care the provider is responsible for implementing specific activities or treatments as outlined in a medical plan of care."

MA Waivers Manual, Chapter IV, Section 4.10, Page IV-80 (emphasis added)

There are additional requirements listed in that section for staff qualifications, staff training and program licensure.

The Petitioner appeals the agency's denial of funding for the [REDACTED] summer day camp asserting that it supports her outcomes for social interaction with peers. The Petitioner's mother testified that the request for the [REDACTED] camp was for the month of August when the Petitioner does not get social interaction through school. She testified that the [REDACTED] group did not meet during August and music therapy met only once. During July, the Petitioner attended summer school so she did not need the additional social interaction. The Petitioner's mother testified that the [REDACTED] camp was funded by the waiver the previous summer.

The agency representatives testified at the hearing that the Petitioner's request for day services was reviewed in light of her outcomes. The agency asserted that the Petitioner's outcomes of social interaction are being met by her participation in music therapy and the [REDACTED] social group. The agency further noted that the waiver covers disability-related services. The [REDACTED] camp is not a specialized camp for children with special needs.

I conclude that the agency acted within its discretion to deny the requested funding for the [REDACTED] camp. The Waivers standards indicate that day services must relate to a child's disability and the staff is required to have specialized qualifications and training. The Petitioner has the burden of demonstrating that the requested services meet the criteria for funding. In this case, I do not have any evidence that the requested services meet the criteria as described in the MA Waivers manual, Section 4.10. The agency noted that if the current services of music therapy and the [REDACTED] social group are not meeting the

Petitioner's needs, there are options to explore other appropriate services that meet the criteria and Petitioner's needs.

CONCLUSIONS OF LAW

The agency had the authority to deny the requested services to the Petitioner.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 6th day of February, 2017

\s _____
Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 6, 2017.

Waukesha County Health and Human Services
Bureau of Long-Term Support

